

**REMARKS**

Claims 1-3, 5-25, and 27-40 are presently pending in the application. Of these, claims 1, 22, 23, and 30 are independent. Claims 1, 22, 23, and 30-32 are presently amended. Reconsideration of presently pending claims is respectfully requested in light of the above amendments and the following remarks.

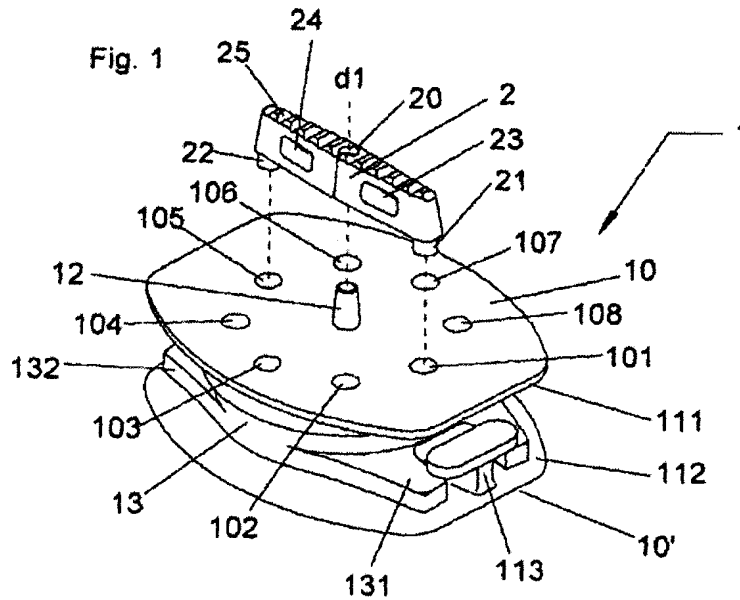
**Compliance with §103**

The Office Action indicates that claims 1-3, 5-25, and 27-40 are rejected under 35 U.S.C. §103(a) as being unpatentable over International Publication WO 03/039400 to Huppert et al. in view of Baccelli et al. (U.S. Patent No. 6,454,805).

Applicants submit that in the present case, a *prima facie* case of obviousness has not been established. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be some expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. See MPEP § 2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As an initial matter, Huppert fails to teach or suggest all the limitations of claim 1, and therefore, a *prima facie* case of obviousness has not been established. In particular, Huppert fails to teach or suggest "a prosthetic device for anterior-oblique insertion into an intervertebral space, comprising a first component having an outer bearing surface including an *integral first flange* arranged to engage a first vertebra" and "a second component having an outer bearing surface including an *integral second flange* arranged to engage a second vertebra."

Huppert teaches a non-integral flange 2, as shown in Fig. 1, reproduced below.



Huppert, Fig. 1

In the Detailed Description, Huppert teaches that the winglet (or flange) 2 is “able to be positioned in a plurality of angular positions around an axis closely perpendicular to the bearing face of the prosthesis or to the vertebral plate, the plurality of angular positions being defined by a plurality of co-operating means prepared in the bearing face of the prosthesis and co-operating with the complementary means on the winglet.” (Page 2, lines 19-24).

It is further taught by Huppert that, “[p]referably, the bearing face comprises a pin 12 in its central region, and the drilling 20 of the winglet is located in its central part. It is thus possible to position said winglet on the pin in a plurality of angular positions on the bearing face and around said pin. The prosthesis furthermore comprises a plurality of co-operating means able to define the angular position by co-operating with the complementary means carried by the winglet.” (Page 6, lines 7-13).

Huppert comments that the novelty of having an adjustable winglet is advantageous for reducing the “number of versions to be manufactured or kept in stock.” (Page 7, lines 25-28). Thus, not only does Huppert fail to disclose an integral flange as required by Applicants, it seems an integral flange is antithetical to the invention of Huppert. Neither does combining Baccelli with Huppert cure this deficiency as no flanges or keels are disclosed by Baccelli.

In the absence of any teaching or suggestion in Huppert of an integral flange, the Office Action has not established a *prima facie* case of obviousness. Because the combination of Huppert and Baccelli fails to teach or suggest all the limitations of claim 1, claim 1 should be allowable over the cited references.

Additionally, each of independent claims 22, 23 and 30 also require integral flanges. Accordingly, these claims, like claim 1, should be allowable for at least the reasons discussed above.

Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of independent claims 1, 22, 23, and 30.

In addition to the reasons discussed above, claim 23 recites additional features not found in the cited combination of references. Therefore, the cited combination does not establish a *prima facie* rejection. The Office Action states “a recess, as best seen in Fig. 3, formed in the second articular surface, the recess being adapted to engage with the projection to provide articulating motion between the first and second components.” (Office Action, Pages 2-3).

Claim 23 recites:

A prosthetic device for anterior-oblique insertion into an intervertebral space, comprising:

a first component being triangular in shape to define first, second and third side portions, comprising:

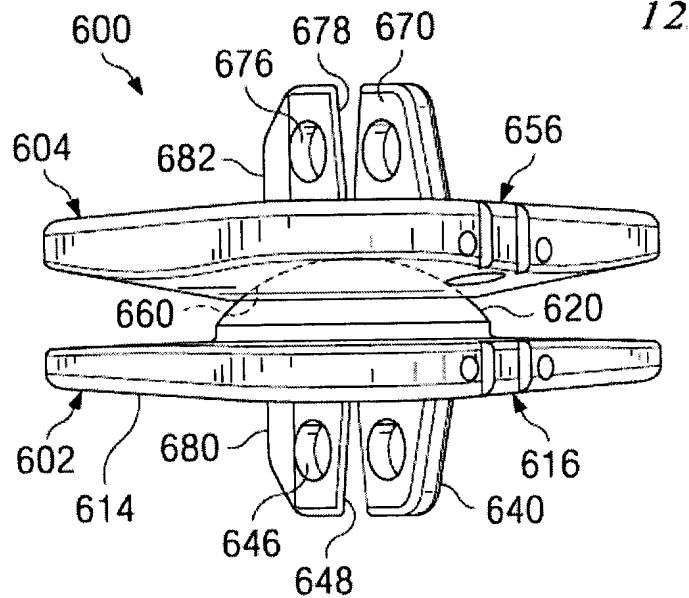
a first articular surface and an opposed first bearing surface, the first articular surface forming a projection; and  
a first flange integral with and extending from the first bearing surface, the first flange being angled relative to the longitudinal and transverse axes of the first component; and

a second component, comprising:

a second articular surface and an opposed second bearing surface, the second articular surface forming a recess adapted to engage with the projection to provide for articulating motion between the first and second components; and

a second flange integral with and extending from the second bearing surface, the second flange being angled relative to the longitudinal and transverse axes of the second component.

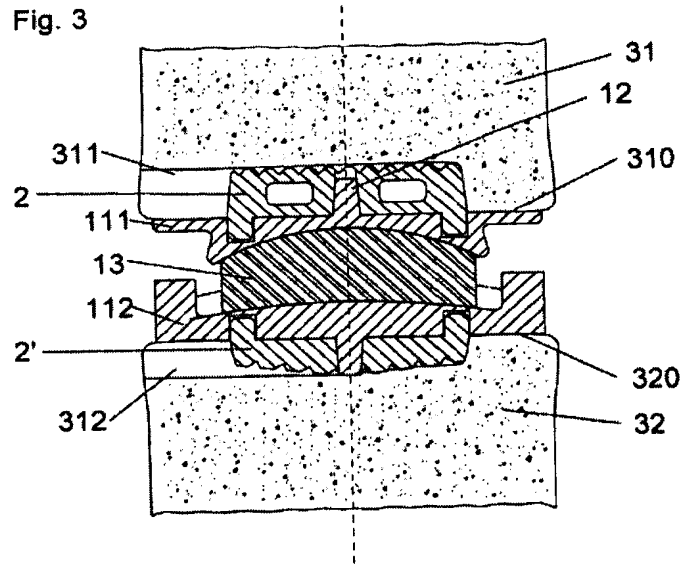
Each of these required elements of claim 23 can be seen in Fig. 40, reproduced below.



*Fig. 40*

The combination of Huppert and Baccelli fails to establish a *prima facie* rejection because the combination of references fails to disclose all the features of claim 23. For example, both Huppert and Baccelli, alone or in combination, fail to disclose a first component with “a first articular surface and an opposed first bearing surface, *the first articular surface forming a projection*” and a “*second articular surface forming a recess adapted to engage with the projection* to provide for articulating motion between the first and second components.”

Instead, as shown in Fig. 4 reproduced below, Huppert discloses two components 111 and 112 separated, and not engaged, by a nucleus 13.



Thus, Huppert does not disclose the same articulating components as recited in claim 23. Baccelli does not cure the deficiency because Baccelli discloses a non-articulating fusion device. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

**Dependent Claims**

Dependent claims 31 and 32 are amended only as to form, without changing their scope in order to more particularly state their recited subject matter. Claims 2-3, 5-21 and 37 depend from independent claim 1, claims 24-25 and 27-29 depend from independent claim 23, claims 31-36, 38 and 40 depend from independent claim 30, and claim 39 depends from independent claim 22, all of which are believed to be distinct from the art of record, for example, for the same reasons discussed above with respect to the independent claims. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 2-3, 5-21, 24-25, 27-29 and 31-40 and allow the claims.

**CONCLUSION**

An early formal notice of allowance of claims 1-3, 5-25, and 27-40 is requested. The Office Action contains characterizations of the claims and the related art to which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

If the Examiner determines that a discussion with the undersigned would expedite prosecution, he is invited to call at 972-739-6969.

Please grant any extension of time required to enter this response and charge any additional required fees, including claim fees, to our Deposit Account No. 08-1394.


Respectfully submitted,



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<p style="text-align: center;"><b>Certificate of Service</b></p> <p>I hereby certify that this correspondence is being filed with the U.S. Patent and Trademark Office via EFS-Web on <u>November 20, 2007</u></p> <p style="text-align: center;"> Diane Sutton</p>
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